

## § 763.95

## 40 CFR Ch. I (7–1–12 Edition)

removed, the name and location of storage or disposal site of the ACM.

(Approved by the Office of Management and Budget under control number 2070-0091)

### § 763.95 Warning labels.

(a) The local education agency shall attach a warning label immediately adjacent to any friable and nonfriable ACM and suspected ACM assumed to be ACM located in routine maintenance areas (such as boiler rooms) at each school building. This shall include:

(1) Friable ACM that was responded to by a means other than removal.

(2) ACM for which no response action was carried out.

(b) All labels shall be prominently displayed in readily visible locations and shall remain posted until the ACM that is labeled is removed.

(c) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.

### § 763.97 Compliance and enforcement.

(a) *Compliance with Title II of the Act.*

(1) Section 207(a) of Title II of the Act (15 U.S.C. 2647) makes it unlawful for any local education agency to:

(i) Fail to conduct inspections pursuant to section 203(b) of Title II of the Act, including failure to follow procedures and failure to use accredited personnel and laboratories.

(ii) Knowingly submit false information to the Governor regarding any inspection pursuant to regulations under section 203(i) of Title II of the Act.

(iii) Fail to develop a management plan pursuant to regulations under section 203(i) of Title II of the Act.

(2) Section 207(a) of Title II of the Act (15 U.S.C. 2647) also provides that any local education agency which violates any provision of section 207 shall be liable for a civil penalty of not more than \$5,000 for each day during which the violation continues. For the purposes of this subpart, a “violation” means a failure to comply with respect to a single school building.

(b) *Compliance with Title I of the Act.*

(1) Section 15(1)(D) of Title I of the Act (15 U.S.C. 2614) makes it unlawful for

any person to fail or refuse to comply with any requirement of Title II or any rule promulgated or order issued under Title II. Therefore, any person who violates any requirement of this subpart is in violation of section 15 of Title I of the Act.

(2) Section 15(3) of Title I of the Act (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to establish or maintain records, submit reports, notices or other information, or permit access to or copying of records, as required by this Act or a rule thereunder.

(3) Section 15(4) (15 U.S.C. 2614) of Title I of the Act makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11 of Title I of the Act.

(4) Section 16(a) of Title I of the Act (15 U.S.C. 2615) provides that any person who violates any provision of section 15 of Title I of the Act shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this paragraph, constitute a separate violation of section 15. A local education agency is not liable for any civil penalty under Title I of the Act for failing or refusing to comply with any rule promulgated or order issued under Title II of the Act.

(c) *Criminal penalties.* If any violation committed by any person (including a local education agency) is knowing or willful, criminal penalties may be assessed under section 16(b) of Title I of the Act.

(d) *Injunctive relief.* The Agency may obtain injunctive relief under section 208(b) of Title II of the Act to respond to a hazard which poses an imminent and substantial endangerment to human health or the environment or section 17 (15 U.S.C. 2616) of Title I of the Act to restrain any violation of section 15 of Title I of the Act or to compel the taking of any action required by or under Title I of the Act.

(e) *Citizen complaints.* Any citizen who wishes to file a complaint pursuant to section 207(d) of Title II of the Act should direct the complaint to the Governor of the State or the EPA Asbestos Ombudsman, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The citizen complaint should be in writing and

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identified as a citizen complaint pursuant to section 207(d) of Title II of TSCA. The EPA Asbestos Ombudsman or the Governor shall investigate and respond to the complaint within a reasonable period of time if the allegations provide a reasonable basis to believe that a violation of the Act has occurred.

(f) *Inspections.* EPA may conduct inspections and review management plans under section 11 of Title I of the Act (15 U.S.C. 2610) to ensure compliance.

### § 763.98 Waiver; delegation to State.

(a) *General.* (1) Upon request from a state Governor and after notice and comment and an opportunity for a public hearing in accordance with paragraphs (b) and (c) of this section, EPA may waive some or all of the requirements of this subpart E if the state has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this subpart. In addition, if the state chooses to receive electronic documents, the state program must include, at a minimum, the requirements of 40 CFR part 3—(Electronic reporting).

(2) A waiver from any requirement of this subpart E shall apply only to the specific provision for which a waiver has been granted under this section. All requirements of this subpart E shall apply until a waiver is granted under this section.

(b) *Request.* Each request by a Governor to waive any requirement of this subpart E shall be sent with three complete copies of the request to the Regional Administrator for the EPA Region in which the State is located and shall include:

(1) A copy of the State provisions or proposed provisions relating to its program of asbestos inspection and management in schools for which the request is made.

(2)(i) The name of the State agency that is or will be responsible for administering and enforcing the requirements for which a waiver is requested, the names and job titles of responsible officials in that agency, and phone

numbers where the officials can be contacted.

(ii) In the event that more than one agency is or will be responsible for administering and enforcing the requirements for which a waiver is requested, a description of the functions to be performed by each agency, how the program will be coordinated by the lead agency to ensure consistency and effective administration in the asbestos inspection and management program within the State, the names and job titles of responsible officials in the agencies, and phone numbers where the officials can be contacted. The lead agency will serve as the central contact point for the EPA.

(3) Detailed reasons, supporting papers, and the rationale for concluding that the state's asbestos inspection and management program provisions for which the request is made are at least as stringent as the requirements of Subpart E of this part, and that, if the state chooses to receive electronic documents, the state program includes, at a minimum, the requirements of 40 CFR part 3—(Electronic reporting).

(4) A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how the State intends to handle them.

(5) A statement of the resources that the State intends to devote to the administration and enforcement of the provisions relating to the waiver request.

(6) Copies of any specific or enabling State laws (enacted and pending enactment) and regulations (promulgated and pending promulgation) relating to the request, including provisions for assessing criminal and/or civil penalties.

(7) Assurance from the Governor, the Attorney General, or the legal counsel of the lead agency that the lead agency or other cooperating agencies have the legal authority necessary to carry out the requirements relating to the request.

(c) *General notice—hearing.* (1) Within 30 days after receipt of a request for a waiver, EPA will determine the completeness of the request. If EPA does not request further information within